Crl.A. 279/2002
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE HRISHIKESH ROY

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Aru nachal Pradesh)

CRIMINAL APPEAL NO.279(J) OF 2002

Shri Sunil Nag @ Solin Nag

& & & APPELLANT
-Versus-

The State of Assam
& & &RESPONDENT

P R E S E N T
HON'BLE MR. JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE HRISHIKESH ROY

For the Appellant : Mr. J. Handique
Amicus Curiae.

For the respondent : Mr. B. Singha,
Public Prosecutor, Assam
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Date of hearing : 18.01.2007

Date of Judgment and Order : 18.01.2007

JUDGMENT AND ORDER
(Oral)

By D. Biswas, CJ(Actg.)

This appeal is directed against the judgment dated 3.6.2002 pass ed by the learned Sessions Judge, Tinsukia in Sessions Case No.179(N)/2000. By t he impugned judgment, the leaned Sessions Judge, on conclusion of trial in the a foresaid sessions' case, convicted the appellant Sunil Nag @ Solin Nag under Sec tion 302 I.P.C. for causing death of Sapira Nag on 23rd May, 1998. On such convi ction, the accused appellant has been sentenced to imprisonment for life and to pay a fine of Rs.1000/-, in default, to suffer further imprisonment for three mo nths.

2. In this case, a first information report filed by Shri Gupa Nag to the effect that the accused along with Aibu Nag and Ruben Kumar entered the c ourtyard and assaulted his wife Sapira Nag on the neck with a sharp weapon causi ng grievous injury. The injured was immediately taken to the hospital where she was declared dead. The police registered Margherita P.S. Case No.75 of 1998 unde r Section 302/34 I.P.C., took up investigation and, in due course, submitted cha rge sheet against all the three accused persons. The learned Sessions Judge, on receipt of the case on commitment, framed charge against the appellant Sunil Nag under Section 302 I.P.C. The charge was read over and explained to the accused

to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Sessions Judge proceeded with the trial, recorded the evidence of 7 PWs including the doctor and the police officer, and on conclusion of the trial, giving a guilty verdict and sentencing the appellant as stated above.

3. P.W. 6, Dr. R. Chaliha, performed the postmortem on the dead body of the deceased on being identified by Const. No.179 Siddhewar Gogoi and P.W. 1 Gopa Nag, husband of the deceased. The doctor found the following injuries on the person of the deceased :-

Injuries : 1. An incised wound over the upper part of the neck directed from left to right measuring 9 X 4 CM and cutting skin, soft tissuses, vessels, muscles, nerves and the third cervical vertebrae. .

4. In the opinion of the doctor, the death was caused due to shock and haemorrhage as a result of injuries on the neck. The injuries were anti-mortem in nature and caused by heavy sharp cutting weapon and were homicidal in nature. According to the medical officer, the injuries caused were sufficient to cause death of a person in the ordinary course of nature. P.W. 6 also proved the postmortem report (Ext.3) and Ext.3(1) is his signature. In his cross-examination, P.W. 6 stated that heavy sharp cutting weapon includes dao and sword. The evidence of P.W. 6 read with the inquest report (Ext.1) prove the prosecution allegation that Sapira Nag succumbed to her injuries caused on her neck.

5. About the culpability of the appellant in relation to the alleged crime, we may refer to the evidence on record.

6. P.W. 1 Gupa Nag is the husband of the deceased. P.W.2 Smti Joymoni Nag is the sister of P.W. 1. Both of them claimed to have seen the occurrence. P.W. 3 Shri Trinath Tanti is an independent person. He is a reported witness. He is also a signatory to the inquest report Ext.1 and Ext. 1(1) is his signature. P.W. 4, Shri Indra Chetri is a neighbour. He is also a reported witness. P.W. 5 Shri Nagina Sona is the brother of the deceased. He has not seen the occurrence. He saw some persons carrying the dead body of his sister and on enquiry came to know that she was killed by Sunil Nag. Of all these witnesses, P.Ws. 1 and 2 appear to be the most important witnesses examined by the prosecution in support of the charge. It would, therefore, be apposite to refer their evidence in details.

7. P.W. 1 Shri Gupa Nag, husband of the deceased, stated that on the day of occurrence he returned from duty at around 3 P.M. He was sitting with his wife. His sister was also present in the house and the children were not in the house. At that time, the appellant Sunil Nag caught hold of his son Vikram Nag outside his house. His wife seeing the same went out. Immediately thereafter, the accused dealt a ’dao’ blow on her neck and fled away. His wife suffered severe cut injuries. She was taken to the hospital where she died. Accordingly, police was informed. The police came to the place of occurrence, held inquest over the dead body and shifted the dead body for postmortem examination. The witness further stated that while running away the accused had left the ’dao’.

8. P.W. 1 has been subjected to cross-examination. But nothing significant could be brought out by the defence to demolish his credibility. The witness stated that he was not aware as to why the appellant had caught hold of his son Vikram. He did not make this statement to the investigating officer. He could not remember the size of the dao. He maintained that a single dao blow was given by the accused. He further stated that his elder sister was present in the veranda at the time of occurrence. From the statement made in the cross-examination, we find that he has no enmity with the accused and that he did not go to the police station to lodge the F.I.R.

9. Keeping in mind the evidence of P.W. 1, we may refer to the evidence of P.W. 2 Smti Joymoni Nag, sister of P.W. 1, who stated that she has been living with P.W.1 who is her brother P.W. 1 at the time of occurrence. She along with her brother and the deceased were present in the house. Her brother and the deceased were sitting outside and she was inside the house. On hearing cries outside, she came out and saw the accused dealing a dao blow on Sapira Nag and running away. She further stated that Sapira Nag suffered injuries on her neck. In her cross-examination, she stated that she did not see Vikram at the time of occurrence. But she maintained that after hearing the cries she came out and saw her sister lying in the drain and none was by her side. She further stated that she had not seen the weapon of assault. She was reported by her brother (P.W.1) that Sapira Nag was given a dao blow. She denied that that the accused was not involved with the alleged crime.

10. The evidence of P.W. 1 and 2 read together prove the fact that P.Ws. 1 and 2 and the deceased were in the house at the time of occurrence. The evidence of P.W. 1 clearly show that while sitting in the verandah with his wife, they saw their son being nabbed by the appellant. His wife went out and was assaulted by the accused with a ’dao’ on her neck. The evidence that P.W. 1 had seen his wife being assaulted by the accused stands unrebutted. P.W. 2 in her examination-in-chief specifically stated that she came out hearing the cries and saw the accused giving dao blow on Sapira Nag. But deviated in her cross-examination by saying that after hearing the cries she came out and she saw her sister-in-law lying in the drain. Even if we do not put any reliance on her evidence as to the fact that she has seen the actual act of assault, her statement made during the course of cross-examination clearly show that immediately after the occurrence, she came out and saw her sister-in-law in an injured condition and was reported by P.W. 1 that accused had assaulted her sister-in-law.

11. The evidence of P.Ws 1 and 2 read together lead to the irrefutable conclusion that it is the appellant who had assaulted the deceased near the courtyard of the house of P.W. 1 on an issue relating to her son Vikram.

12. Mr. J. Handique, learned Amicus Curiae submitted that P.W. 1 emphatically insisted that the appellant has used a dao in assaulting Sapira Nag, whereas before the Investigating Officer, P.W. 1 stated that his wife was killed by means of a pointed weapon.

13. This contradiction in our opinion can be explained with reference to the evidence of P.W. 6 Dr. R. Chaliha, who during his cross-examination, stated that heavy sharp cutting weapon includes dao as well as sword. As is generally understood, a sword is a heavy sharp cutting weapon though its’ edge pointed. That apart, from the seizure list (Ext.2), we find that the weapon seized was one Scimitar, 16 inches long with a wooden handle. The handle is 4 inches long while the sharp edged iron portion is 12 inches long. The scimitar is slightly bent at the tip. The tip is pointed. The portion towards the handle is slightly thinner than the front portion. There is a knot towards the lower part of the handle. The nature of weapon seized from the place of occurrence by the police soon after they reached the place of occurrence explains the apparent inconsistency in the evidence of P.W. 1 pointed out by the learned Amicus Curiae.

14. The next defence advanced by Mr. Handique is that P.W. 1 was blind and, therefore, his evidence cannot be relied upon for the purpose of conviction. This argument has been advanced obviously from the statements made by the accused in answer to Question No.8 during his course of examination under Section 313 Cr.P.C. But, there is nothing on record to show that P.W. 1 was blind. No evidence has been adduced to show that P.W. 3 was blind and it was not possible for him to see the occurrence. That apart, from the evidence on record, particularly, the evidence of P.W. 1, we find that P.W. 1 had not only seen the occurrence but had also shifted his wife to hospital and took all follow-up actions as we

re necessary. Therefore, this stray statement by the accused during the course of examination under Section 313 Cr.P.C. is not of material consequence.

15. The last leg of argument of Shri Handique is that no independent witness has been examined in this case. The learned Amicus Curiae laid emphasis on the failure of the prosecution to examine Vikram, son of P.W. 1.

16. We have considered this submission with due importance. Non-examination of independent witness are not always fatal. It depends on the fact situation of each and every case. In the instant case, there are only two witnesses i.e. P.Ws. 1 and 2 who could bring home the charge framed against the appellant. Therefore, non-examination of other persons who were present at the place of occurrence and who had not seen the occurrence, cannot be a ground for adverse presumption against the prosecution.

17. After due consideration of the evidence on record, particularly that of PWs 1 and 2, and the medical officer (P.W.6), we are of the opinion that the prosecution has succeeded in proving the charge brought against the appellant for causing death of Sapira Nag. We, therefore, find no scope to interfere with the judgment under appeal.

18. Consequently, the appeal is dismissed.

19. Mr. J. Handique, learned Amicus Curiae be paid a sum of Rs.3000/- as remuneration for rendering assistance to the Court.